

House Bill 264 (AS PASSED HOUSE AND SENATE)

By: Representatives Millar of the 79<sup>th</sup>, Willard of the 49<sup>th</sup>, Geisinger of the 48<sup>th</sup>, and  
Wilkinson of the 52<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Article 2A of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the homestead option sales and use tax, so as to change the manner and method of disbursing the proceeds of such tax; to provide for definitions; to provide for legislative intent; to provide for procedures, conditions, and limitations; to provide for powers and duties of the state revenue commissioner; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2A of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to the homestead option sales and use tax, is amended by revising Code Section 48-8-101, relating to definitions, to read as follows:

"48-8-101.

As used in this article, the term:

(1) 'Ad valorem taxes for county purposes' means any and all ad valorem taxes for county maintenance and operation purposes levied by, for, or on behalf of the county, excluding taxes to retire general obligation bonded indebtedness of the county.

(2) 'Existing municipality' means a municipality created prior to January 1, 2007, lying wholly within or partially within a county.

(3) 'Homestead' means homestead as defined and qualified in Code Section 48-5-40, with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(4) 'Qualified municipality' means a municipality created on or after January 1, 2007, lying wholly within or partially within a county."

**SECTION 2.**

Said article is further amended by adding a new Code section to read as follows:

1 "48-8-101.1.

2 It is the intent of the General Assembly that the proceeds of the homestead option sales and  
3 use tax be distributed equitably to the counties and qualified municipalities such that the  
4 residents of a new incorporated municipality will continue to receive a benefit from that  
5 tax substantially equal to the benefit they would have received if the area covered by the  
6 municipality had not incorporated. The provisions of this article shall be liberally  
7 construed to effectuate such intent."

### 8 SECTION 3.

9 Said article is further amended by revising Code Section 48-8-104, relating to administration  
10 and disbursement of homestead option sales and use tax proceeds, as follows:

11 "48-8-104.

12 (a) The sales and use tax levied pursuant to this article shall be exclusively administered  
13 and collected by the commissioner for the use and benefit of each county whose  
14 geographical boundary is conterminous with that of a special district. Such administration  
15 and collection shall be accomplished in the same manner and subject to the same applicable  
16 provisions, procedures, and penalties provided in Article 1 of this chapter; provided,  
17 however, that all moneys collected from each taxpayer by the commissioner shall be  
18 applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed  
19 a percentage of the amount of the sales and use tax due and accounted for and shall be  
20 reimbursed in the form of a deduction in submitting, reporting, and paying the amount due  
21 if such amount is not delinquent at the time of payment. The deduction shall be at the rate  
22 and subject to the requirements specified under subsections (b) through (f) of Code Section  
23 48-8-50.

24 (b) Each sales and use tax return remitting sales and use taxes collected under this article  
25 shall separately identify the location of each retail establishment at which any of the sales  
26 and use taxes remitted were collected and shall specify the amount of sales and the amount  
27 of taxes collected at each establishment for the period covered by the return in order to  
28 facilitate the determination by the commissioner that all sales and use taxes imposed by this  
29 article are collected and distributed according to situs of sale.

30 (c) The proceeds of the sales and use tax collected by the commissioner in each special  
31 district under this article shall be disbursed as soon as practicable after collection as  
32 follows:

33 (1) One percent of the amount collected shall be paid into the general fund of the state  
34 treasury in order to defray the costs of administration;

35 (2) Except for the percentage provided in paragraph (1) of this subsection and the  
36 amount determined under subsections (d) and (e) of this Code section, the remaining

proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district; provided, however, that a county and any qualified municipality shall be authorized by intergovernmental agreement to waive the equalization amount otherwise required under subsections (d) and (e) of this Code section and provide for a different distribution amount. In the event of such waiver, except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district. As a condition precedent for the authority to levy the sales and use tax or to collect any proceeds from the tax authorized by this article for the year following the first complete calendar year in which it is levied and for all subsequent years except the year following the year in which the sales and use tax is terminated under Code Section 48-8-106, the county whose geographical boundary is conterminous with that of the special district shall, except as otherwise provided in subsection (c) of Code Section 48-8-102, expend such proceeds as follows:

(A) A portion of such proceeds shall be expended for the purpose of funding capital outlay projects as follows:

(i) The governing authority of the county whose geographical boundary is conterminous with that of the special district shall establish the capital factor which shall not exceed .200 and, for a county in which a qualified municipality is located, shall not be less than the level required by subsection (d) of this Code section; therefore, at a minimum, the county shall set the capital factor at a level that yields an amount of capital outlay proceeds that is equal to or greater than the sum of all equalization amounts due qualified municipalities and existing municipalities under subsection (e) of this Code section; and

(ii) Capital outlay projects shall be funded in an amount equal to the product of the capital factor multiplied by the net amount of the sales and use tax proceeds collected under this article during the previous calendar year, and this amount shall be referred to as capital outlay proceeds in subsections (d) and (e) of this Code section;

(B) A portion of such proceeds shall be expended for the purpose of funding services within the special district equal to the revenue lost to the homestead exemption as provided in ~~Code Section 48-8-104~~ this Code section as follows:

(i) The homestead factor shall be calculated by multiplying the quantity 1.000 minus the capital factor times an amount equal to the net amount of sales and use tax collected in the special district pursuant to this article for the previous calendar year, and then dividing by the taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property

after all other homestead exemptions have been applied, rounding the result to three decimal places;

(ii) If the homestead factor is less than or equal to 1.000, the amount of homestead exemption created under this article on qualified homestead property shall be equal to the product of the homestead factor multiplied times the net assessment of each qualified homestead remaining after all other homestead exemptions have been applied; and

(iii) If the homestead factor is greater than 1.000, the homestead exemption created by this article on qualified homestead property shall be equal to the net assessment of each homestead remaining after all other homestead exemptions have been applied; and

(C) If any of such proceeds remain following the distribution provided for in subparagraphs (A) and (B) of this paragraph and subsections (d) and (e) of this Code section:

(i) The millage rate levied for county purposes shall be rolled back in an amount equal to such excess divided by the net taxable digest for county purposes after deducting all homestead exemptions including the exemption under this article; and

(ii) In the event the rollback created by division (i) of this subparagraph exceeds the millage rate for county purposes, the governing authority of the county whose boundary is conterminous with the special district shall be authorized to expend the surplus funds for funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d)(1) The commissioner shall distribute to the governing authority of each qualified municipality located in the special district a share of the capital outlay proceeds calculated as provided in this subsection and subsection (e) of this Code section which proceeds shall be expended for the purpose of funding capital outlay projects of such municipality.

(2) Both the tax commissioner and the governing authority for the county in which a qualified municipality is located shall cooperate with and assist the commissioner in the calculation of the equalization amounts under subsection (e) of this Code section and shall, on or before July 1 of each year, provide to the commissioner and the governing authority of each qualified municipality written certification of the following:

(A) The capital factor set by the county for the current calendar year; provided, however, that the capital factor may not exceed 0.200;

(B) The total amount, if any, due to be paid to existing municipalities from the capital outlay proceeds as required by any intergovernmental agreement between the county and such municipalities;

(C) The incorporated county millage rate in each qualified municipality;

(D) The net homestead digest for each qualified municipality;

(E) The total homestead digest; and

(F) The unincorporated county millage rate.

If the tax commissioner and the governing authority of the county fail to provide such certification on or before July 1, the commissioner shall not distribute to such county any additional proceeds of the sales and use tax collected after July 1 unless and until such certification is provided.

(3) The commissioner shall then calculate the equalization amount due each qualified municipality based on the certifications provided by the tax commissioner and the governing authority of the county and pay such amount to the governing authority of each qualified municipality in six equal monthly payments as soon as practicable during or after each of the last six months of the current calendar year. In the event an existing municipality that has entered into an intergovernmental agreement with a county at any time before January 1, 2007, to receive capital outlay proceeds of the homestead option sales and use tax and such intergovernmental agreement has become or does become null and void for any reason, such existing municipality shall be treated under this article the same as if it were a qualified municipality as defined in paragraph (4) of Code Section 48-8-101 and therefore receive payment of equalization amounts under this article as provided for under this article. The commissioner shall distribute to the governing authority of the county each month the net sales and use tax remaining after payment of equalization amounts to the qualified municipalities.

(e)(1) As used in this subsection, the term:

(A) 'Equalization amount' means for a qualified municipality the product of the equalization millage times the net homestead digest for that qualified municipality.

(B) 'Equalization millage' means for each qualified municipality the product of the homestead factor calculated pursuant to division (c)(2)(B)(i) of this Code section times the difference between the unincorporated county millage rate and the incorporated county millage rate for that qualified municipality.

(C) 'Incorporated county millage rate' means the millage rate for all ad valorem taxes for county purposes levied by the county in each of the qualified municipalities in the county.

(D) 'Net homestead digest' means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of the

qualified municipality located in the county remaining after all other homestead exemptions are applied.

(E) 'Total homestead digest' means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(F) 'Unincorporated county millage rate' means the millage rate for all ad valorem taxes for county purposes levied by the county in the unincorporated areas of the county.

(2) For illustration purposes, a hypothetical example of the calculation of the equalization amount is provided below.

First, calculate the homestead factor in accordance with division (c)(2)(B)(i) of this Code section as follows:

<u>(A) Capital factor certified by county as required by</u>	<u>0.150</u>
<u>subsection (d) of this Code section</u>	

<u>(B) Net amount of sales and use tax collected in the</u>	<u>\$ 50 million</u>
<u>special district pursuant to this article for the previous</u>	
<u>calendar year</u>	

<u>(C) Taxes levied for county purposes on only that portion</u>	<u>\$100 million</u>
<u>of the county tax digest that represents net assessments on</u>	
<u>qualified homestead property after all other homestead</u>	
<u>exemptions have been applied</u>	

<u>(D) Calculation of homestead factor using figures above</u>	<u>.425</u>
<u>= [(1-.0150)(\$50 million/\$100 million)]</u>	

Next, calculate the equalization amount in accordance with paragraph (1) of this subsection as follows:

<u>(E) Unincorporated county millage rate</u>	<u>15.0 mills</u>
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<u>(F) Minus the incorporated county millage rate for</u>	<u>(10.0 mills)</u>
<u>qualified municipality 'Y'</u>	

<u>Difference:</u>	<u>= 5.0 mills</u>
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<u>(G) Times homestead factor (calculated above)</u>	<u>x .425</u>
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<u>(H) Equals the equalization millage:</u>	<u>= 2.125 mills</u>
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<u>(I) Times net homestead digest for qualified</u>	<u>\$200 million</u>
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<u>municipality 'Y'</u>	
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(J) <u>Equals the equalization amount payable to</u>	<u>\$ 425,000.00</u>
<u>municipality 'Y'</u>	

(3) In the event the total amount payable in a calendar year to all existing municipalities as certified by the county pursuant to subparagraph (d)(2)(B) of this Code section plus the total equalization amount payable to all qualified municipalities in the special district exceeds the capital outlay proceeds calculated based on a maximum capital factor of 0.200, the commissioner shall pay to the governing authority of each qualified municipality a share of such proceeds calculated as follows:

(A) Determine the capital outlay proceeds based on a maximum capital factor of 0.200:

(B) Subtract the amount certified by the county as payable to existing municipalities pursuant to subparagraph (d)(2)(B) of this Code section:

(C) The remaining amount equals the portion of the capital outlay proceeds that may be used by the commissioner to pay equalization amounts to qualified municipalities.

The commissioner shall calculate each qualified municipality's share of such remaining amount by dividing the net homestead digest for each qualified municipality by the total homestead digest for all municipalities.

(4) In the event the incorporated county millage rate for a qualified municipality is greater than the unincorporated county millage rate, no payment shall be due from the governing authority of the qualified municipality to the governing authority of the county.

(5) In the event the amount of capital outlay proceeds exceeds the sum of the equalization amounts due all qualified municipalities plus the total amount certified under subparagraph (d)(2)(B) of this Code section as due all existing municipalities, the commissioner shall distribute to each qualified municipality a portion of such excess equal to the net homestead digest for such municipality divided by the total homestead digest.

(6) If any qualified municipality is located partially in the county then only that portion so located shall be considered in the calculations contained in this subsection."

## SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

## SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.